

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 944

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED JUNE 15, 2000

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Co-Sponsored by:

Senators Inverso and Bucco

SYNOPSIS

Prohibits transfer of structured settlement payment rights under certain circumstances.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Commerce Committee.



1 **AN ACT** concerning structured settlements.

2

3 **BE IT ENACTED by the Senate and General Assembly of the State**
4 **of New Jersey:**

5

6 1. As used in this act:

7 "Annuity issuer" means an insurer that has issued an insurance
8 contract used to fund periodic payments under a structured settlement.

9 "Court" means the Superior Court of New Jersey.

10 "Discounted present value" means the fair present value of future
11 payments, as determined by discounting the payments to the present
12 using the most recently published applicable federal rate for
13 determining the present value of an annuity, as issued by the United
14 States Internal Revenue Service.

15 "Expenses" means brokers' commissions, service charges,
16 application fees, processing fees, closing costs, filing fees,
17 administrative fees, legal fees, notary fees and other commissions,
18 costs, expenses and charges payable by the payee or deductible from
19 the gross consideration that would be paid to the payee in connection
20 with the transfer.

21 "Independent professional advice" means advice of an attorney,
22 certified public accountant, actuary or other licensed professional
23 advisor:

24 (1) Who is engaged by a payee to render advice concerning the
25 legal, tax and financial implications of a transfer of structured
26 settlement payment rights;

27 (2) Who is not in any manner affiliated with or compensated by
28 the transferee of the transfer; and

29 (3) Whose compensation for rendering advice is not affected by
30 whether a transfer occurs or does not occur.

31 "Interested party" means, with respect to any structured
32 settlement, the payee, any beneficiary irrevocably designated under the
33 annuity contract to receive payments following the payee's death, the
34 annuity issuer and the structured settlement obligor.

35 "Payee" means an individual who is receiving payments under a
36 structured settlement and proposes to make a transfer of payment
37 rights thereunder.

38 "Structured settlement" means an arrangement for periodic
39 payment of damages for personal injuries established by settlement or
40 judgment in resolution of a tort claim.

41 "Structured settlement agreement" means the agreement, judgment,
42 stipulation or release embodying the terms of a structured settlement,
43 including the rights of the payee to receive periodic payments.

44 "Structured settlement obligor" means, with respect to any
45 structured settlement, the party that has the continuing periodic
46 payment obligation to the payee under a structured settlement

1 agreement.

2 "Structured settlement payment rights" means the rights to receive
3 periodic payments under a structured settlement, whether from the
4 structured settlement obligor or the annuity issuer, if:

5 (1) The payee or transferee is domiciled in this State; or

6 (2) The structured settlement agreement was approved by a court
7 in this State; or

8 (3) The structured settlement agreement was entered into in
9 connection with an action filed in this State.

10 "Terms of the structured settlement" include, with respect to any
11 structured settlement, the terms of the structured settlement
12 agreement, the annuity contract and any order of any court authorizing
13 or approving the structured settlement.

14 "Transfer" means any sale, assignment, pledge, hypothecation,
15 grant of power of attorney by a payee to a transferee for purposes of
16 a transfer agreement or other form of alienation or encumbrance made
17 by a payee for consideration.

18 "Transfer agreement" means the agreement providing for transfer
19 of structured settlement payment rights from a payee to a transferee.

20 "Transferee" means any person receiving structured settlement
21 payment rights resulting from a transfer.

22

23 2. A transfer of structured settlement payment rights shall be
24 effective only if it has been approved in advance in a final court order
25 with express findings that:

26 a. The transfer complies with the provisions of this act;

27 b. The payee has received the disclosure statement as required by
28 section 4 of this act;

29 c. The transfer is fair and reasonable;

30 d. The payee does not seek assignment for the purpose of evading
31 creditors, judgments or obligations for child support and the
32 assignment does not contravene any court order or statute;

33 e. The payee has adequate means of support exclusive of the funds
34 subject to the proposed transfer agreement, including a finding that the
35 transfer would not be likely to result in financial hardship for the
36 payee's dependents.

37 f. The payee has received independent professional advice, which
38 professional shall not directly or indirectly be recommended or
39 facilitated by the transferee, regarding the legal, tax and financial
40 implications of the transfer or has waived such advice in writing.

41 g. The transfer has been expressly approved in writing by each
42 interested party except the annuity issuer and the structured settlement
43 obligor.

44

45 3. a. The Superior Court of New Jersey shall have exclusive
46 jurisdiction over any application for authorization of a transfer of

1 structured settlement payment rights under this act if the payee is
2 domiciled in this State.

3 b. A request for authorization to transfer structured settlement
4 payment rights may be made by the transferee or by the payee and
5 transferee jointly. Not less than 15 days prior to the scheduled hearing
6 on any application for authorization of a transfer of structured
7 settlement payment rights under this act, the applicant shall file and
8 serve on all interested parties a notice of the proposed transfer and an
9 application to the court for approval of the proposed transfer and shall
10 include in the notice:

11 (1) A copy of the transfer agreement;

12 (2) A copy of the disclosure statement required by section 4 of
13 this act;

14 (3) A statement that any interested party may support, oppose or
15 otherwise respond to the transferee's application in writing and the
16 time by which such submissions shall be made; and

17 (4) Notification of the time and place of the hearing if, in the
18 discretion of the court, a hearing is deemed necessary.

19 c. Any interested party, after proper notice, shall be bound by the
20 court's ruling and shall comply therewith.

21 d. The court may impose costs and reasonable attorney's fees
22 against any interested party or transferee who fails to make a good
23 faith effort to comply with the provisions of this act.

24 e. At the discretion of the court and considering all facts and
25 circumstances, any court proceeding pursuant to this section may be
26 treated as a summary proceeding.

27 f. Neither the annuity issuer nor the structured settlement obligor
28 shall have any liability to any other person for making payments
29 pursuant to an order granted by the court pursuant to this act.

30

31 4. Not less than 10 days prior to the date on which a payee enters
32 into a transfer agreement, or an agreement to enter into a transfer
33 agreement, the transferee shall provide a disclosure statement to the
34 payee in bold type, no smaller than 12 points, setting forth:

35 a. The transferee's name, address and taxpayer identification
36 number;

37 b. The amounts and due dates of the structured settlement
38 payments to be transferred;

39 c. The aggregate amount of those payments;

40 d. The discounted present value of those payments, together with
41 the discount rate used in determining the discounted present value;

42 e. The gross amount payable to the payee in exchange for those
43 payments;

44 f. An itemized listing of all expenses;

45 g. The net amount payable to the payee after deduction of all
46 expenses;

1 h. The quotient, expressed as a percentage, obtained by dividing
2 the net payment amount by the discounted present value of the
3 payments;

4 i. The amount of any penalty and the aggregate amount of any
5 liquidated damages, inclusive of penalties, payable by the payee in the
6 event of any breach of the transfer agreement by the payee; and

7 j. The statement of the right of the payee to cancel the transfer
8 agreement pursuant to subsection a. of section 5 of this act.

9

10 5. a. (1) The payee shall have the right to cancel a transfer
11 agreement without cost until midnight five business days after the day
12 on which the transfer agreement is executed. Notice of cancellation
13 shall be given by the payee by regular first class mail or other mail,
14 postage paid, to the transferee, structured settlement obligor and
15 annuity issuer, if any, and notice shall be deemed given when deposited
16 in a mailbox.

17 (2) The payee's right to cancel a transfer agreement shall be
18 contained in the disclosure statement required pursuant to section 4 of
19 this act and shall provide as follows:

20 "You have the right to cancel this transfer agreement without cost
21 to you until midnight five business days after the day on which the
22 transfer agreement is executed.

23 Cancellation occurs when you give notice by regular first class mail
24 or other mail, postage paid, to the transferee and notice is deemed
25 given when deposited in a mailbox."

26 b. No payee who proposes to make a transfer of structured
27 settlement payment rights shall incur any penalty, forfeit any
28 application fee or other payment, or otherwise incur any liability to the
29 proposed transferee based on any failure of the transfer to satisfy the
30 conditions of section 2 of this act.

31 c. No transfer agreement shall contain any provision granting to
32 the transferee a right of first refusal or similar contractual right.

33 d. The provisions of this act shall not be waived.

34

35 6. This act shall be liberally construed to authorize the transfer of
36 structured settlement payment rights only if such transfer is made in
37 accordance with the provisions of this act.

38

39 7. Except when inconsistent with the provisions of this act, the
40 provisions of P.L.1960, c.39 (C.56:8-1 et seq.) shall apply to
41 transactions under this act.

42

43 8. This act shall take effect on the 30th day following enactment
44 and shall apply to any transfer of structured settlement payment rights
45 under a transfer agreement entered into on or after the effective date.